

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Board on Universal Service)	CC Docket No. 96-45
)	
)	
Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan)	DA No. 04-686, DA No. 04-999
)	
)	
Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin)	DA No. 04-565, DA No. 04-999
)	
)	

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

Glenn S. Rabin
Vice President, Federal
Communications Counsel
ALLTEL Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D.C. 20004
(202) 783-3970

Cheryl A. Tritt
Frank W. Krogh
Jennifer L. Kostyu
Morrison & Foerster ^{LLP}
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for ALLTEL Communications, Inc.

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	2
II. NEITHER CENTURYTEL NOR TDS REBUTS ALLTEL’S SHOWING THAT THE REQUESTED SERVICE AREA REDEFINITIONS DO NOT RAISE CREAMSKIMMING CONCERNS	4
A. Redefinition Of Michigan Rural ILEC Service Areas Will Not Raise Creamskimming Concerns.....	4
B. Redefinition Of Wisconsin Rural ILEC Service Areas Will Not Raise Creamskimming Concerns.....	10
III. NO SUPPORT EXISTS FOR FURTHER DELAYING THE INTRODUCTION OF COMPETITION IN RURAL SERVICE AREAS, AND THE WIRELINE COMPETITION BUREAU IMMEDIATELY SHOULD GRANT THE PETITIONS.	13
A. The Commission Has Held Repeatedly That ETC-Related Petitions Should Not Be Delayed Pending Resolution of the Portability Proceeding.....	13
B. The Wireline Competition Bureau Can Rule On The Petitions Pursuant To Delegated Authority	19
IV. CONCLUSION.....	19

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Pursuant to the Commission's Public Notices,¹ ALLTEL Communications, Inc.

¹ FCC Public Notice, *Parties Are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, DA No. 04-999, CC Docket No. 96-45 (Apr. 12, 2004); 69 Fed. Reg. 22029 (Apr. 23, 2004); FCC Public Notice, *Due Date Extended for Reply Comments Concerning Supplemented Petitions for Eligible Telecommunications Carrier Designations*, DA No. 04-1628, CC Docket No. 96-45 (June 3, 2004).

² *Application of ALLTEL Communications, Inc., ALLTEL Wireless of Wisconsin RSA #1, LLC and ALLTEL Wireless of Wisconsin RSA #7, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 7131-TI-101 (Sept. 30, 2003) (“*WPSC Decision*”).

Michigan Public Service Commission (“MPSC Decision”).³ The comments filed by CenturyTel⁴ and TDS⁵ present no compelling reason to further delay grant of ALLTEL’s redefinition requests (“Michigan Petition”⁶ and Wisconsin Petition;⁷ collectively, “Petitions”) and the introduction of competition and customer choice in rural service areas.

I. INTRODUCTION AND SUMMARY

Both CenturyTel and TDS focus their oppositions on a handful of the rural incumbent local exchange carrier (“ILEC”) study areas covered by the Petitions. CenturyTel is silent on ALLTEL’s Wisconsin Petition, and its challenge with regard to two study areas covered by the Michigan Petition fails to address ALLTEL’s demonstration of compliance with the standards

³ *Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Case No. U-13765 (Mich. PSC Sept. 11, 2003) (“MPSC Decision”).

⁴ *See* Comments of CenturyTel of Alabama, LLC, *Federal-State Board on Universal Service*, CC Docket No. 96-45 (May 28, 2004) (“CenturyTel Comments”).

⁵ Comments of TDS Telecommunications Corp., *Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc. Petition for Consent to Redefine Rural Telephone Company Service Areas in Michigan*, CC Docket No. 96-45 (May 28, 2004) (“TDS Michigan Comments”); Comments of TDS Telecommunications Corp., *Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc. Petition for Consent to Redefine Rural Telephone Company Service Areas in Wisconsin*, CC Docket No. 96-45 (May 28, 2004) (“TDS Wisconsin Comments”).

⁶ *See* Petition of ALLTEL Communications, Inc., *Federal-State Joint Board on Universal Service; Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45 (Dec. 17, 2003) (“Michigan Petition”). *See also* Amendment to the Petition of ALLTEL Communications, Inc. For Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan, CC Docket No. 96-45 (Jan. 29, 2004).

⁷ Petition of ALLTEL Communications, Inc., *Federal-State Joint Board on Universal Service; Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin*, CC Docket No. 96-45 (Nov. 21, 2003, amended Nov. 26, 2003) (“Wisconsin Petition”).

applied in *Highland Cellular*⁸ and *Virginia Cellular*.⁹ TDS proposes alternative measures of density as a proxy for costs for the two Michigan study areas and three Wisconsin study areas that it addresses, but its factual assertions, even if true, do not support its allegations of creamskimming. Moreover, TDS's request for delay based on the Federal-State Joint Board's *Recommended Decision*¹⁰ is contrary to consistent Commission precedent.

Beyond these narrowly focused challenges, no substantive opposition to ALLTEL's Petitions was submitted.¹¹ The absence of persuasive opposition confirms the strength of

⁸ *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, FCC 04-37, CC Docket No. 96-45 (Apr. 12, 2004) ("*Highland Cellular*").

⁹ *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

¹⁰ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (Feb. 27, 2004) ("*Recommended Decision*").

¹¹ Verizon does not address ALLTEL's service area redefinition requests, except to list the covered Michigan and Wisconsin study areas in the universal service funding chart attached to its comments, and discusses only petitions for eligible telecommunications carrier ("ETC") designation, rendering its generic opposition irrelevant to the Petitions. See Comments of Verizon, *Federal-State Board on Universal Service*, CC Docket No. 96-45 (May 28, 2004) ("*Verizon Comments*"). To the extent that the Verizon Comments and attached chart can be construed to include the Petitions within the scope of its arguments as to the impact of all pending petitions on universal service high-cost funds (see Verizon Comments at 2-6), ALLTEL incorporates by reference its previous response to that argument. See Reply Comments of ALLTEL Communications, Inc. at 16-20, *Federal-State Board on Universal Service*, CC Docket No. 96-45 (May 14, 2004) ("*ETC Reply*"). See also Reply Comments of ALLTEL Communications, Inc. at 8-9, 18, *Federal-State Board on Universal Service*, CC Docket No. 96-45, DA No. 03-1881, DA No. 03-1882 (July 14, 2003) (response to argument regarding impact on rural and non-rural high-cost funds).

Similarly, the Communications Workers of America do not address ALLTEL's redefinition Petitions in their comments. See Comments of Communications Workers of America, *Federal-State Board on Universal Service*, CC Docket No. 96-45 (May 28, 2004) ("*CWA Comments*"). The CWA Comments mirror the Verizon arguments as to the impact of pending petitions on the high-cost funds (see *id.* at 2-5), and complain about ALLTEL's service

(Footnote continues on next page.)

ALLTEL's showing that the requested service area redefinitions are in the public interest, and the Commission should immediately approve the Petitions to facilitate the development of competition in the covered rural ILEC service areas.

II. NEITHER CENTURYTEL NOR TDS REBUTS ALLTEL'S SHOWING THAT THE REQUESTED SERVICE AREA REDEFINITIONS DO NOT RAISE CREAMSKIMMING CONCERNS.

A. Redefinition Of Michigan Rural ILEC Service Areas Will Not Raise Creamskimming Concerns.

CenturyTel challenges ALLTEL's redefinition request as to only one of the two CenturyTel study areas covered by the Michigan Petition -- the CenturyTel of Michigan study area -- and the Wolverine Telephone Company ("Wolverine") study area. CenturyTel's sole argument is that in the case of those study areas, ALLTEL serves the highest-density wire center in the study area and that ALLTEL's discussion in its Michigan Further Supplement¹² of the implications of the population data "beg[s] the question."¹³ In fact, by brushing aside ALLTEL's application of the Commission's creamskimming analysis in *Virginia Cellular* and *Highland Cellular*, it is CenturyTel that begs the question. ALLTEL demonstrated that in four of the five

(Footnote continued from previous page.)

quality and wireless ETC construction plans (*see id.* at 5-10). ALLTEL refers the Commission to its ETC Reply in response to CWA's high-cost fund impact arguments. Moreover, CWA's complaints about ALLTEL's service quality and ETC construction plans are irrelevant to the Petitions and, to the extent they relate to ALLTEL's ETC petitions, they are two weeks late. *See* FCC Public Notice, *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA No. 04-998 (Apr. 12, 2004); 69 Fed. Reg. 22031 (Apr. 23, 2004) (inviting parties to file comments on May 7, 2004). To the extent that any of CenturyTel's arguments can be construed to address ALLTEL's ETC petitions, they are similarly untimely.

¹² Letter from Cheryl A. Tritt, counsel, ALLTEL Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, DA No. 04-686, DA No. 04-999 (May 14, 2004) ("Michigan Further Supplement").

¹³ CenturyTel Comments at 10. CenturyTel also misclassifies both service area redefinition requests as "CETC Petitions." *Id.* at 1 & n.1.

rural Michigan ILEC study areas partially served by ALLTEL, including the two partially served CenturyTel study areas, the served wire centers are less densely populated than the unserved wire centers, and in the fifth study area, the Wolverine study area, the average densities of the served and unserved wire centers are virtually identical.¹⁴

Virginia Cellular specifically found that these population density patterns do not raise creamskimming concerns, because the petitioner “will not be serving only low-cost wire centers to the exclusion of high-cost areas.”¹⁵ Contrary to CenturyTel’s conclusion, ALLTEL could not possibly be “engaged in creamskimming in the affected study areas,”¹⁶ given that, in each partially served rural study area, it is serving wire centers that, on average, are more costly, or at least no less costly, to serve than the wire centers it does not serve.

Moreover, ALLTEL went even further and applied, as additional assurance, *Highland Cellular*’s elaboration on the creamskimming analysis. In *Highland Cellular*, the Commission took an additional step after reviewing the relative population densities of the served and unserved wire centers in Verizon South’s rural study area. The Commission weighed the impact of relative wire center population densities on creamskimming opportunities by focusing on the relative total populations of the high-density and low-density wire centers. In finding that designation of Highland Cellular as an eligible telecommunications carrier (“ETC”) in the served Verizon South wire centers would raise creamskimming concerns, the Commission noted that approximately 94 percent of Highland’s potential customers in the Verizon South study area

¹⁴ Michigan Further Supplement at 4 & Exh. B.

¹⁵ *Virginia Cellular*, 19 FCC Rcd at 1578-79.

¹⁶ CenturyTel Comments at 10.

would be located in high density wire centers, leaving only six percent of its customers in that study area located in low density wire centers.¹⁷

In its Michigan Further Supplement, ALLTEL showed that although one wire center in the CenturyTel of Michigan study area has a high population density, it accounts for less than 12 percent of the total population of the wire centers served by ALLTEL in that study area.¹⁸

Applying the *Highland Cellular* analysis, that single high-density wire center will not create any creamskimming opportunities or undercut CenturyTel's ability to serve the entire study area, because its impact is outweighed by the low-density wire centers served by ALLTEL, and because the served wire centers in that study area, taken together, are less densely populated, on average, than the unserved wire centers.¹⁹ CenturyTel fails to explain why, under *Highland Cellular*, a single wire center accounting for a small fraction of the total served population in its study area could have an impact on creamskimming opportunities, particularly in light of CenturyTel's disaggregation plan for that study area.²⁰

Similarly, in the Wolverine study area, ALLTEL demonstrated that, although it serves the highest-density wire center in the study area, the second highest-density wire center in that study area is not served by ALLTEL, and its density is roughly of the same magnitude as the highest-density wire center. Moreover, the population of the unserved second highest-density wire center is significantly greater than the population of the served highest-density wire center, further diminishing whatever minor impact the highest-density wire center otherwise might have

¹⁷ *Highland Cellular* ¶ 31.

¹⁸ Michigan Further Supplement at 5.

¹⁹ See *Highland Cellular* ¶ 31; *Virginia Cellular*, 19 FCC Rcd at 1578.

²⁰ Michigan Further Supplement at 5.

had on creamskimming opportunities in the Wolverine study area.²¹ There, too, ALLTEL “will not be serving only low-cost wire centers to the exclusion of high-cost areas.”²² The population density and distribution pattern exhibited in the Wolverine study area, especially the virtually equivalent average densities of the served and unserved wire centers, ensure that the redefinition of the Wolverine service area by wire center cannot undermine CenturyTel’s ability to serve the entire study area.²³

TDS’s challenge to the Michigan Petition also is limited to two study areas and fails to make a case against the study areas’ redefinition. As to the Wolverine study area, TDS argues that of the two wire centers served by ALLTEL, most of ALLTEL’s customers are located in the highest-density wire center.²⁴ TDS asserts that, under the *Highland Cellular* approach, this population distribution requires a finding of a potential for creamskimming.²⁵

TDS, however, skipped a step in the analysis. *Highland Cellular* found creamskimming opportunities only because “Highland Cellular would be primarily serving customers in the low-

²¹ *Id.* at 5-6.

²² *Virginia Cellular*, 19 FCC Rcd at 1578.

²³ *See id.* at 1578-79 & n.110 (where average density of served wire centers not significantly greater than average density of unserved wire centers, the disparity “is not significant enough to raise creamskimming concerns.”).

²⁴ TDS states that ALLTEL “includes one high-cost wire center in the wire centers it proposes to serve” in one study area and “seeks to serve the lowest density wire center” in another study area, TDS Michigan Comments at 5, as if ALLTEL were selecting which wire centers to serve. As TDS concedes, however, ALLTEL did not select which areas to serve, but, rather, proposes to serve its entire wireless licensed service area. *Id.* at 3. Similarly, ALLTEL did not deliberately “avoid[] serving the least dense, most high-cost wire centers” in another study area, as TDS admits. TDS Wisconsin Comments at 5.

²⁵ TDS Michigan Comments at 5.

cost and high-density portion of Verizon South's study area."²⁶ Highland Cellular's service area covered the four highest-density wire centers in that study area, including the three most populous wire centers, making the served wire centers significantly more densely populated on average than the unserved wire centers.²⁷ In the Wolverine study area, however, ALLTEL does not serve the most populous and second highest-density wire center, or the third highest-density wire center, and the average densities of the served and unserved wire centers are virtually identical. Even applying TDS's alternative measure of density, the average line density of the served Wolverine wire centers -- 53.332 lines per square mile ("lines/sq. mi.") -- is not significantly greater than the average line density of the unserved wire centers (40.94 lines/sq. mi.).²⁸ The demographics of Wolverine's wire centers and ALLTEL's service area, particularly ALLTEL's noncoverage of the most populous high-density wire center, defeat any opportunities for creamskimming under *Virginia Cellular* and *Highland Cellular*.

TDS also argues that density variations within certain Wolverine wire centers, which it admits are imperfectly measured by its Census Block Group ("CBG") data, raise creamskimming concerns because such variations make disaggregation less viable as a protection against

²⁶ *Highland Cellular* ¶ 31.

²⁷ See letter from David A. LaFuria and Steven M. Chernoff, Counsel, Highland Cellular, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Jan. 23, 2004), attachment (chart showing served and unserved wire centers in Verizon South study area in Virginia).

²⁸ See Attachment 1 hereto, a chart summarizing the wire center line density data provided in the TDS comments. See also *Virginia Cellular*, 19 FCC Rcd at 1578-79 & n.110 (where average density of served wire centers not significantly greater than average density of unserved wire centers, the disparity "is not significant enough to raise creamskimming concerns.").

creamskimming.²⁹ TDS has not established, however, that any additional protection against creamslicing in the Wolverine study area is needed. Because ALLTEL “will not be serving only low-cost wire centers to the exclusion of high-cost areas,”³⁰ no additional protections are necessary, and any variations in density that may exist within wire centers do not change that result.

TDS also does not explain why density variations within wire centers, as opposed to variations among wire centers, affect the usefulness of disaggregation as a protection against creamslicing. Where an ILEC disaggregates on a wire center basis, it will receive universal service support for a wire center based on the average cost of serving the entire wire center. To the extent that costs vary within a wire center that is part of a disaggregated study area, the total amount of support received by the ILEC, or a competitive ETC (“CETC”), for that wire center overall will be appropriate, with no net creamslicing effect. Presumably, the ILEC also experiences similar variations in density in portions of some wire centers not served by CETCs.³¹

TDS’s density variation argument is also largely unsupported by the facts. TDS points out density variations within the Munger wire center, but does not acknowledge that all of the

²⁹ TDS Michigan Comments at 6-7. TDS does not explain why it did not use more fine-grained census data more congruent with wire center boundaries.

³⁰ *Virginia Cellular*, 19 FCC Rcd at 1578.

³¹ For example, although TDS mentions the density variations within the Wolverine wire centers served by ALLTEL, it does not mention the variations within the high-density Millington wire center in the Wolverine study area, which ALLTEL does not serve. As shown in Attachment 2 hereto, a chart of the average population densities in each CBG entirely or partially within the Millington wire center, the population densities of the CBGs entirely or partially within the Millington wire center range from 65.17 to 285.86 persons per square mile (“p./sq. mi.”). It should be noted that, for those CBGs that are located largely in adjoining wire centers and only partially in the Millington wire center, Attachment 2 identifies the adjoining wire center. Attachments 4 and 5, discussed *infra*, follow the same format.

CBGs in the wire center are of low density and do not exhibit much variation (between 18.3 lines and 29.6 lines/sq. mi. within the wire center).³² Similarly, TDS also notes density variations within the single low-density wire center in the Shiawassee Telephone Company study area served by ALLTEL, the Bell Oak wire center. Each of the four CBGs in that wire center has a low density, however, and no significant variation among them exists (between 17.5 and 20 lines per square mile within the wire center, according to TDS).³³ Moreover, because the Bell Oak wire center has such a low density, especially relative to the two unserved Shiawassee wire centers, any density variations within the served wire center are irrelevant. No creamskimming is conceivable where the served wire center is so much less densely populated than the unserved wire centers.³⁴

B. Redefinition Of Wisconsin Rural ILEC Service Areas Will Not Raise Creamskimming Concerns.

CenturyTel does not address the Wisconsin Petition, and TDS limits its challenge to only three of the 14 rural Wisconsin ILEC study areas covered by the Wisconsin Petition: Mount Vernon Telephone Company (“Mt. Vernon”), Midway Telephone Company (“Midway”) and Stockbridge and Sherwood Telephone (“S&S”). TDS concedes at the outset that “ALLTEL has not sought to serve only the most densely-populated [ILEC] wire centers.”³⁵ Thus, ALLTEL “will not be serving only low-cost wire centers to the exclusion of high-cost areas,” and the

³² TDS Michigan Comments at 7.

³³ *Id.*

³⁴ See Michigan Further Supplement at 4, Exh. A; Att. 1 hereto; *Virginia Cellular*, 19 FCC Rcd at 1578.

³⁵ TDS Wisconsin Comments at 5.

Wisconsin Petition accordingly does not raise creamskimming concerns under *Virginia Cellular*.³⁶

TDS's further argument that ALLTEL does not serve the least dense wire center in each study area misses the point.³⁷ The single served wire center in the Mt. Vernon study area is substantially less densely populated than the average of the two unserved wire centers, one of which is the most populous and highest-density wire center in the study area.³⁸ Similarly, using TDS's own measure of density, ALLTEL is not serving the highest-density of the three wire centers in the Midway study area, the Medford wire center, which has more than five times the population of the single served wire center.³⁹ In the Mt. Vernon and Midway study areas, the

³⁶ *Virginia Cellular*, 19 FCC Rcd at 1578. Contrary to TDS's concession, ALLTEL actually does serve the two highest-density wire centers in the S&S study area. All of the S&S wire centers, however, are of roughly average density. For example, the average densities of the two served wire centers -- 80 and 63 persons per square mile -- and thus their likely costs, are not out of line with the average density of 67 persons per square mile for all of the served wire centers in partially served rural study areas in Wisconsin. See Letter from Cheryl A. Tritt, counsel, ALLTEL Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, DA No. 04-565, DA No. 04-999, Exh. A, Exh. B (May 14, 2004) ("Wisconsin Further Supplement"). That the unserved wire center in the S&S study area is even less densely populated thus does not mean that ALLTEL is "serving only low-cost areas to the exclusion of high-cost areas" in that study area. See *Virginia Cellular*, 19 FCC Rcd at 1578.

See also Attachment 3 hereto, which makes three corrections to Exhibit A to the Wisconsin Further Supplement. In Exhibit A, both the first and second wire centers listed for the Midway study area were labeled "Dorchester." The second Midway wire center should have been labeled "Stetsonville." Also, both the second and third wire centers in the Mt. Vernon study area were listed as "Verona." The third Mt. Vernon wire center should have been labeled "Mt. Vernon." Finally, the first wire center in the S&S study area was incorrectly labeled "Hilbert." It should have been listed as "Sherwood." All of the data shown for those wire centers in Exhibit A to the Wisconsin Further Supplement, however, was correct.

³⁷ TDS Wisconsin Comments at 5.

³⁸ See Wisconsin Further Supplement 5 & n.14, Exh. A, and Att. 3 hereto.

³⁹ Compare TDS Wisconsin Comments at 5 with Att. 3 hereto.

average density of the served wire centers, using TDS's measure of density, is less than the average density of the unserved wire centers, and, in the case of the Mt. Vernon study area, significantly less, negating any creamskimming concerns under *Virginia Cellular*⁴⁰ and *Highland Cellular*.⁴¹ As TDS concedes, ALLTEL's service area is limited to "mid-density wire centers," at least in the Mt. Vernon and Midway study areas, which does not leave any "cream" to skim.⁴²

TDS's discussion of density variations within the Wisconsin served wire centers is irrelevant for all of the same reasons set forth above as to the Michigan wire centers.⁴³ Thus, both TDS and CenturyTel fail to rebut ALLTEL's demonstrations that its Petitions do not raise creamskimming concerns.

⁴⁰ *Virginia Cellular*, 19 FCC Rcd at 1578.

⁴¹ *Highland Cellular* ¶ 31. The average line densities of the served and unserved wire centers are: for Mt. Vernon (33.568 and 121.057 lines/sq. mi.), and for Midway (20.159 and 20.206 lines/sq. mi.). See Att. 1 hereto.

⁴² TDS Wisconsin Comments at 5.

⁴³ *Id.* at 5-7. TDS mentions the density variations within the single served wire center in the Mt. Vernon study area, the New Glarus wire center, but it is silent on the wide variations (from 24.8 to 2221.68 p./sq. mi.) within the much higher density Verona wire center, which is not served by ALLTEL and has over three times the population of the New Glarus wire center. Compare TDS Wisconsin Comments at 4, 6 with Wisconsin Further Supplement, Exh. A, and Attachment 4 hereto, a chart of the average population densities in each CBG entirely or partially within the Verona wire center. Similarly, TDS discusses the density variations within the single served wire center in the Midway study area, the Dorchester wire center, but it fails to mention the tremendous variations (from 5.22 to 2304.05 p./sq. mi.) within the higher density Medford wire center, which has five times the population of the Dorchester wire center. Compare TDS Wisconsin Comments at 5-6 with Wisconsin Further Supplement, Exh. A, and Att. 5 hereto, a chart of the average population densities in each CBG entirely or partially within the Medford wire center.

III. NO SUPPORT EXISTS FOR FURTHER DELAYING THE INTRODUCTION OF COMPETITION IN RURAL SERVICE AREAS, AND THE WIRELINE COMPETITION BUREAU IMMEDIATELY SHOULD GRANT THE PETITIONS.

A. The Commission Has Held Repeatedly That ETC-Related Petitions Should Not Be Delayed Pending Resolution of the Portability Proceeding.

TDS's alternative argument that any further consideration of the Petitions should be delayed until the Commission resolves an issue discussed in the Joint Board's *Recommended Decision* should be rejected.⁴⁴ The Commission has repeatedly held that it need not delay consideration of individual ETC-related petitions pending the conclusion of its *Portability Proceeding*,⁴⁵ in which it is considering various ETC and universal service policy issues.⁴⁶ The *Portability Proceeding* addresses issues of general *future* applicability that are outside the scope of the instant proceedings. Contrary to TDS's assertions, the prospect of future changes in ETC designation standards, and, specifically, with regard to the use of per-line support as a benchmark for ETC designations, cannot be allowed to delay consideration of ALLTEL's narrow requests that the Commission approve the *WPSC Decision* and the *MPSC Decision*. The

⁴⁴ See, e.g., TDS Michigan Comments at 8-9.

⁴⁵ See *Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (2002); FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC designation Process*, 18 FCC Rcd 1941 (2003); *Recommended Decision*, 19 FCC Rcd 4257 (collectively, "*Portability Proceeding*").

⁴⁶ See, e.g., *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24405-06 (WCB 2002) (concerns raised by commenters that are generally applicable to the universal service mechanism "are beyond the scope of this Order, which designates a particular carrier as an ETC") ("*Cellular South*"); *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, 23535 n.27 (suspension of an application until the Joint Board issued its recommendation would "unnecessarily delay resolution of this matter") ("*RCC Holdings*").

Commission reaffirmed this conclusion, following the release of the *Recommended Decision*, in *Highland Cellular*, in which it rejected an ILEC request to postpone its decision on Highland Cellular’s application until after consideration of issues that are being reviewed in the *Portability Proceeding*.⁴⁷ The Commission accordingly should reject TDS’s argument that consideration of the Petitions be delayed until the Commission acts on the *Recommended Decision*.

Further delay is especially unwarranted because no logical connection exists between the Commission’s review of the *Recommended Decision* and these Petitions. In the *Recommended Decision*, the Joint Board suggested that per-line support may be one measurement of the federal high-cost support received by ETCs *when considering whether it serves the public interest to designate an additional ETC in a given area*.⁴⁸ In this case, the WPSC and MPSC already have determined that designating ALLTEL as an ETC in Wisconsin and Michigan serves the public interest.⁴⁹ If TDS disagrees with those decisions, it should have challenged them in the proper forum. These Petitions concern only this Commission’s approval of the state commissions’ redefinition decisions. Per-line support as a potential benchmark for ETC designations has no bearing on the Commission’s consideration of the Petitions.

⁴⁷ *Highland Cellular* ¶ 25 (noting Verizon request to delay consideration of Highland Cellular petition until after policy issues resolved). *See also Virginia Cellular*, 19 FCC Rcd at 1565, 1569, 1577-78 (deciding Virginia Cellular’s ETC petition despite noting that “the outcome of the Commission’s pending proceeding before the Joint Board... could potentially impact the support that Virginia Cellular and other ETCs may receive in the future”). Rather than assert here that delay is necessary, the opponents should have sought reconsideration of *Highland Cellular* and prior ETC and redefinition decisions that rejected delaying consideration of pending petitions.

⁴⁸ *Recommended Decision*, ¶¶ 43-44.

⁴⁹ *WPSC Decision* at 8-12; *MPSC Decision* at 11-13.

Furthermore, the *Portability Proceeding* largely concerns issues related to the designation of additional ETCs and universal service funding mechanisms, rather than the redefinition of rural service areas. In the *Recommended Decision*, the Joint Board endorsed maintaining without modification the procedures the Commission previously adopted for reviewing redefinition requests.⁵⁰ Under the terms of the *Recommended Decision* itself, therefore, there is no reason to delay redefinition petitions because the standards to be applied to such requests are not likely to change.

TDS attempts to draw a logical connection between a per-line support benchmark for ETC designations in high-cost areas, on one hand, and service area redefinition petitions, on the other. It argues that, in an area where costs are already too high to support multiple ETC entry, reducing an ETC's potential service area by redefining the covered study area further reduces economies of scale and creates service areas that are even less capable of supporting competitive entry than the entire ILEC study area.⁵¹ If TDS is referring to a wireless ETC's service area, however, it is not clear that redefining ILEC study areas results in smaller service areas. Typically, a wireless carrier's license covers parts of more than one ILEC study area, and sometimes parts of multiple study areas. The wireless service area may be larger than any single study area, but redefinition is required because the wireless license is not perfectly congruent with study areas boundaries. Service area redefinition therefore does not inherently result in smaller service areas, as TDS suggests, and thus has no necessary negative correlation with economies of scale or the capacity of a rural market to support multiple ETCs.

⁵⁰ *Recommended Decision*, ¶ 55.

⁵¹ *See, e.g.*, TDS Wisconsin Comments at 8.

Moreover, because a wireless carrier may well be more efficient than the rural ILEC with which it competes, a smaller wireless service area may be as efficient as, or more efficient than, a larger wireline study area. A given rural market therefore may be able to support more wireless ETCs than wireline competitors. Because redefinition facilitates competitive entry by wireless ETCs, redefinition therefore makes possible more competition and consumer choices. The public will reap the benefits from additional competition and increased consumer choice among alternative services, especially mobility. Whether or not these redefinition Petitions should be granted therefore should not depend on the possibility of a future per-line support benchmark for granting ETC status.

Even if the issue of a per-line support benchmark were somehow relevant to these redefinition requests, TDS concedes that the Joint Board could not reach consensus on a specific benchmark, and the Joint Board only recommended that the Commission seek comment on the appropriateness of such a benchmark.⁵² It is entirely possible that the Commission will not ever adopt a per-line benchmark for ETC designations. The appropriate forum for TDS's assertions regarding a per-line support benchmark is the *Portability Proceeding*, rather than in individual redefinition proceedings.⁵³

Moreover, the Commission has expressed its intent to “complete consideration of any proposed definition of a service area promptly,”⁵⁴ and has recognized that “excessive delay in the

⁵² See, e.g., TDS Michigan Comments at 8-9.

⁵³ See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1565, 1569; *Highland Cellular* ¶¶ 3, 12; *RCC Holdings*, 17 FCC Rcd at 23535 n.27.

⁵⁴ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8881 (1997) (“*Universal Service Order*”). The Commission also has previously committed to resolve ETC-related petitions within a six-month time frame. See *RCC Holdings*, 17 FCC Rcd at 23535 n.27
(Footnote continues on next page.)

designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas.”⁵⁵ TDS has not provided any persuasive reason for the Commission to revisit its precedent continuing to grant redefinition requests during the pendency of the *Portability Proceeding*.⁵⁶ It is a bedrock principle of administrative law that an agency is not permitted “to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, [and] another for Tuesday....”⁵⁷ Thus, any delay or denial of these Petitions premised upon the policy grounds raised by TDS would violate “the Commission’s responsibility to assure comparable treatment of similarly situated parties.”⁵⁸

In addition, further delay in the review of the Petitions would violate the universal service principle of competitive neutrality.⁵⁹ As the Commission has previously recognized in the case

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(citing *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208, 12265 (2000) (“*Promoting Deployment*”)).

⁵⁵ *Promoting Deployment*, 15 FCC Rcd at 12255-56.

⁵⁶ See, e.g., *RCC Holdings*, 17 FCC Rcd at 23547-49 (granting ETC and redefinition requests during pendency of the *Portability Proceeding*); *Cellular South*, 17 FCC Rcd at 24407 (same).

⁵⁷ *Sharron Motor Lines, Inc. v. United States*, 633 F.2d 1115, 1117 (5th Cir. 1981) (reversing denial of authority where agency, citing insignificant differences between applicant and its competitors, failed to accord them uniform treatment) (quoting *Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5th Cir. 1964) (Brown, J., concurring), *rev’d on other grounds*, 382 U.S. 46 (1965)). See also, *NLRB v. Sunnyland Packing Co.*, 557 F.2d 1157, 1160 (5th Cir. 1977).

⁵⁸ *Revocation of License of Robert J. Listberger, Jr.*, 76 FCC 2d 212, 219 (Rev. Bd. 1980). Moreover, the prohibition against disparate treatment should apply both in the context of requests for formal stays and stays effectively created by excessive delay.

⁵⁹ *Universal Service Order*, 12 FCC Rcd at 8935 (“[T]he 1996 Act’s mandate to foster competition in the provision of telecommunications services in all areas of the country and the

(Footnote continues on next page.)

of ETC designation petitions, delaying consideration of ALLTEL's Petitions would deny ALLTEL competitive entry as an ETC in certain rural ILEC service areas in Wisconsin and Michigan while the ILECs continue to draw on universal service funds:

We would be concerned about a universal service fund mechanism that provides funding only to ILECs. A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support... that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices -- match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government-imposed competitive disadvantage. Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).⁶⁰

Thus, any delay or denial of these Petitions premised upon the policy grounds raised by TDS would fail to treat similarly situated parties comparably and would violate the universal service principle of competitive neutrality.

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principle of competitive neutrality compel [the Commission] to implement support mechanisms that will send accurate market signals to competitors.”)

⁶⁰ *Western Wireless Corporation for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227, 16231 (2000) (citations omitted).

ALLTEL's Petitions have been pending for approximately six months, contravening the Commission's commitment to act quickly on redefinition requests. The Commission should therefore reject TDS's request to further delay consideration of the Petitions and grant them expeditiously.

B. The Wireline Competition Bureau Can Rule On The Petitions Pursuant To Delegated Authority.

The standards to be applied to service area redefinition requests were originally set forth in the Joint Board's *1996 Recommended Decision* and adopted by the Commission in 1997.⁶¹ Those standards were most recently applied in *Virginia Cellular* and *Highland Cellular* and endorsed in the *Recommended Decision*.⁶² Section 0.291(a)(2) of the Commission's rules authorizes the Wireline Competition Bureau ("Bureau") to act on any application that does not "present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."⁶³ ALLTEL's Petitions do not raise issues of fact, law or policy that were not addressed in prior redefinition decisions. Therefore, ALLTEL urges the Bureau to rule expeditiously on the Petitions.

IV. CONCLUSION

ALLTEL filed the Petitions in November and December 2003, supplemented them in March 2004 after the release of *Virginia Cellular*, and further supplemented them in May 2004 after the release of *Highland Cellular*. CenturyTel and TDS oppose the Petitions only as to

⁶¹ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80 (1996) (subsequent history omitted) ("*1996 Recommended Decision*"); *Universal Service Order*, 12 FCC Rcd at 8881-82.

⁶² See *Virginia Cellular*, 19 FCC Rcd at 1582-83; *Highland Cellular* at ¶¶ 38-41; *Recommended Decision*, ¶ 55.

⁶³ 47 C.F.R. § 0.291(a)(2).

portions of the covered service areas. Yet even those narrow challenges fail to rebut ALLTEL's showing that creamskimming is not a concern in the few study areas they address. As Midwest Wireless Wisconsin L.L.C. correctly points out, state commissions are "uniquely qualified" to review redefinition requests, based on their familiarity with their rural service areas.⁶⁴ Given the absence of any significant creamskimming concerns, ALLTEL's requests to approve the *WPSC Decision* and the *MPSC Decision* should be granted expeditiously in order to promote competition and maximize consumer choice in rural service areas.

Respectfully submitted,

Glenn S. Rabin
Vice President, Federal
Communications Counsel
ALLTEL Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D.C. 20004
(202) 783-3970

/s/ Cheryl A. Tritt
Cheryl A. Tritt
Frank W. Krogh
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for ALLTEL Communications, Inc.

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⁶⁴ *Virginia Cellular*, 19 FCC Rcd at 1583-84, cited in Comments of Midwest Wireless Wisconsin L.L.C. in Support of Petition of ALLTEL Communications, Inc. at 4, *Federal-State Board on Universal Service*, CC Docket No. 96-45 (May 28, 2004).

CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 9th day of June, 2004, had copies of the foregoing REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC. delivered to the following via First Class Mail or electronic mail(*), as indicated:

*William Maher
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: William.Maher@fcc.gov

*Eric Einhorn
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Eric.Einhorn@fcc.gov

*Anita Cheng
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Anita.Cheng@fcc.gov

Sheryl Todd (3 copies)
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-B540
Washington, DC 20554

*Carol Matthey
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Carol.Matthey@fcc.gov

*Narda Jones
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Narda.Jones@fcc.gov

*Thomas Buckley
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Thomas.Buckley@fcc.gov

Gerald J. Waldron
Mary Newcomer Williams
Aaron Cooper
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Counsel to TDS Telecommunications Corp.

Michael E. Glover
Edward Shakin
Ann Rakestraw
Verizon
1515 North Courthouse Road, Suite 500
Arlington, VA 22201

CenturyTel, Inc.
John F. Jones
Vice President, Federal Government Relations
100 Century Park Drive
Monroe, LA 71203

Communications Workers of America
Debbie Goldman
George Kohl
501 Third Street, N.W.
Washington, D.C. 20001

Helgi C. Walker
Eve Klindera Reed
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

Counsel to Verizon

Karen Brinkmann
Tonya Rutherford
Latham & Watkins LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004

Counsel to CenturyTel, Inc.

*Best Copy and Printing, Inc.
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554
Via Electronic Mail: fcc@bcpiweb.com

/s/ Theresa Rollins
Theresa Rollins